

HOUSE BILL 950

By Lynn

AN ACT to amend Tennessee Code Annotated, Title 36,
relative to assisted reproduction.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 36, is amended by adding the following
as a new chapter:

36-8-101. For purposes of this chapter:

(1) “Altruistic surrogacy” means a surrogacy agreement in which the surrogate
receives compensation equal to or less than the reimbursement of medical and other
reasonable expenses;

(2) “ART program” means any treatment program or entity providing procedures
involving assisted reproductive technology;

(3) “Assisted reproductive technology” or “ART”:

(A) Means clinical treatments and laboratory procedures that include the
handling of human eggs and sperm, or embryos, with the intent of establishing a
pregnancy; and

(B) Includes in vitro fertilization (IVF), gamete intrafallopian transfer
(GIFT), zygote intrafallopian transfer (ZIFT), and any other assisted reproductive
technologies recognized by the department;

(4) “Biological surrogacy” means a surrogacy arrangement using the surrogate’s
own oocyte;

(5) “Commercial surrogacy” means a surrogacy agreement in which the
surrogate receives compensation beyond the reimbursement of medical and other
reasonable expenses;

- (6) "Commissioner" means the commissioner of health;
- (7) "Department" means the department of health;
- (8) "Donation" or "donate" means the giving or selling of:
 - (A) Human eggs to an oocyte collection agency; or
 - (B) Human sperm to a sperm bank;
- (9) "Donor" means:
 - (A) A female who donates her eggs to an oocyte collection agency; or
 - (B) A male who donates his sperm to a sperm bank;
- (10) "Egg sorting or grading" means a process of rating oocytes based on likelihood of successful implantation, using criteria such as cell number, cell regularity, degree of fragmentation, presence of multinucleation, and appearance;
- (11) "Gestational surrogacy" means a surrogacy arrangement requiring the implantation of a previously created embryo;
- (12) "Oocyte" means a female gamete or sex cell;
- (13) "Oocyte collection agency" means a public or private organization, corporation, partnership, sole proprietorship, company, association, agency, network, joint venture, college or university, or any other entity that is involved in harvesting, retrieving, selling, donating, or storing human eggs from egg donors, with the intent that the eggs be used to create a pregnancy;
- (14) "Reporting data" means any of the information or data identified in § 36-8-104 or § 36-8-105;
- (15) "Sell" means to give or receive valuable consideration in exchange for human eggs or sperm;
- (16) "Sperm bank" means a public or private organization, corporation, partnership, sole proprietorship, company, association, agency, network, joint venture, college or university, or any other entity that is involved in harvesting, retrieving, selling,

donating, or storing human sperm from sperm donors, with the intent that the sperm be used to create a pregnancy through artificial insemination;

(17) "Sperm sorting or grading" means a process of rating sperm based on motility on a scale of one (1) for immotile to four (4) for progressive motility;

(18) "Surrogacy" includes altruistic, biological, commercial, and gestational surrogacy; and

(19) "Valuable consideration" means financial gain or advantage, including cash, in-kind payments, or reimbursement of any cost incurred in connection with the processing, disposal, preservation, quality control, storage, transfer, or donation of human eggs, including lost wages of the donor, endorsements, patient referrals, research donations, or grant monies, as well as any other consideration, with the exception of reasonable medical expenses of the donor.

36-8-102. It shall be unlawful for an oocyte collection agency, sperm bank, or ART program to operate in this state without providing the department the information required by this chapter.

36-8-103.

(a) The commissioner shall:

(1) Promulgate rules for the collection and reporting of data and information submitted by oocyte collection agencies, sperm banks, and ART programs to ensure the confidentiality of egg and sperm donors and those persons receiving treatment or procedures pursuant to an ART program. The commissioner shall set reasonable and necessary fees to be paid by oocyte collection agencies, sperm banks, and ART programs in amounts sufficient to cover the department's cost of administering this chapter;

(2) Maintain public records containing the name, address, contact person, and reporting data of each collection agency, sperm bank, or ART program; and

(3) Promulgate rules specifying the timing, procedures, and format for the transmission of reporting data that each oocyte collection agency, sperm bank, or ART program is required to provide to the department. Reporting data shall be submitted by electronic means.

(b) Each oocyte collection agency, sperm bank, or ART program governed by this chapter shall submit reporting data identified in § 36-8-104 or § 36-8-105 to the department by electronic means.

36-8-104. Each oocyte collection agency and sperm bank shall report the following information or data to the department:

(1)

(A)

(i) The number of egg donors who donated to the oocyte collection agency during the preceding calendar year;

(ii) The total number of egg donors who have donated to the oocyte collection agency since January 1, 2016;

(iii) The number of donors in subdivisions (1)(A)(i) and (ii) who did not reside in this state at the time of the donation; and

(iv) The number of donors in subdivisions (1)(A)(i) and (ii) who made anonymous donations where no child born as a result of the fertilization of an egg could subsequently identify or contact the donor; or

(B)

(i) The number of sperm donors who donated to the sperm bank during the preceding calendar year;

(ii) The total number of sperm donors who have donated to the sperm bank since January 1, 2016;

(iii) The number of donors in subdivisions (1)(B)(i) and (ii) who did not reside in this state at the time of the donation; and

(iv) The number of donors in subdivisions (1)(B)(i) and (ii) who made anonymous donations where no child born as a result of the fertilization of an egg by the donor's sperm could subsequently identify or contact the donor;

(2)

(A) With respect to each egg donor:

(i) The number of eggs donated during the preceding calendar year; and

(ii) The total number of eggs donated since January 1, 2016; or

(B) With respect to each sperm donor:

(i) The number of sperm donations made during the preceding calendar year; and

(ii) The total number of sperm donations made since January 1, 2016;

(3)

(A) The number of eggs sold, given away, unused, disposed of, fertilized, or frozen by the oocyte collection agency during the preceding calendar year and in total, beginning on January 1, 2016; or

(B) The number of sperm samples sold, given away, unused, disposed of, used to fertilize a human egg, or frozen by the sperm bank during the preceding calendar year and in total, beginning on January 1, 2016;

(4) The services offered by the oocyte collection agency or sperm bank, including:

(A) Egg donation;

(B) Sperm donation;

(C) Surrogacy, including altruistic, biological, commercial, and gestational;

(D) Embryo donation;

(E) Pre-implantation genetic diagnosis;

(F) Sex selection;

(G) Egg sorting or grading;

(H) Sperm sorting or grading; and

(I) Fertility treatment for non-infertile persons;

(5) A description of the method or methods of disposal if eggs or sperm were discarded or disposed of during the calendar year;

(6) A description of the procedures by which donors are screened prior to the oocyte collection agency or sperm bank accepting a donation, including any method of psychological screening;

(7) Whether informed consent was obtained before the egg or sperm was donated, a description of the means by which information is provided to a donor, and a copy of the informed consent documents provided to a donor or, if no such documents are provided, a description of the information provided;

(8) A description of what minimal medical information must be obtained from a donor prior to or at the time of donation before a donation will be accepted; how the medical information is retained and for how long; who has access to the information; and the requirements, processes, or means by which those persons can access the information;

(9) A description of valuable consideration provided to donors by the oocyte collection agency or sperm bank; how it is calculated; and the sources of funding for payment of any valuable consideration, including, but not limited to, private insurance, and private, federal, or state funds;

(10) Whether the oocyte collection agency, sperm bank, or research facility is a member of the American Society for Reproductive Medicine (ASRM) or Society for Assisted Reproductive Technology (SART) and, if so, whether the entity adheres to ASRM or SART guidelines;

(11) Whether the oocyte collection agency or sperm bank is accredited and, if so, by what organization; and

(12) A general description of the means by which the oocyte collection agency or sperm bank advertises its services and solicits or recruits donors and surrogates and the jurisdictions where the advertisements, solicitations, or recruitment efforts are made.

36-8-105. Each ART program shall report the following information or data to the department:

(1) Whether, prior to the provision of services, informed consent was obtained from all parties to a treatment or procedure; a description of the means by which the information is provided to parties; and a copy of the informed consent documents provided to parties with respect to each type of service provided or, if no such documents are provided, a description of the information provided to parties;

(2) Success rates, including:

(A) Calculations of:

(i) The total number of live births achieved;

(ii) The percentage of live births per completed cycle of egg retrieval;

(iii) The ratio of the number of clinical pregnancies against the number of retrieval cycles completed;

(iv) The ratio of the number of actual deliveries against the number of retrieval cycles completed; and

(v) The number of live births per ovarian stimulation;

(B) Categorization of the calculations found in subdivision (2)(A), by patients:

(i) Twenty-nine (29) years of age or younger;

(ii) Between thirty (30) and thirty-five (35) years of age;

(iii) Between thirty-six (36) and forty (40) years of age; and

(iv) Forty-one (41) years of age or older; and

(C) The rate of live births per transfer;

(3) Percentage usage of types of ART, including IVF, GIFT, ZIFT, or any combination of ART types;

(4) Percentage of pregnancies resulting in multi-fetal pregnancies, categorized by the number of fetuses;

(5) Percentage of live births having multiple infants;

(6) Fetal reductions per year, including:

(A) The number of fetal reductions performed, reported individually, including the number of embryos transferred before the reduction;

- (B) Percentage of transferred embryos that implant;
 - (C) Percentage of fetal reductions that resulted in a miscarriage; and
 - (D) The use of pre-implantation genetic diagnosis, if used in the ART program, including data on its safety and efficacy; and
- (7) Prematurity or abnormalities, including:
- (A) Percentage of birth defects per single and per multiple birth; and
 - (B) Percentage of premature births per single and per multiple birth.

36-8-106. An oocyte collection agency, sperm bank, or ART program shall disclose in writing to a potential donor any potential conflict of interest, including fiduciary duties, financial benefits, and referral agreements.

36-8-107.

(a) Any person entitled to receive information about a donor from an oocyte collection agency or sperm bank may bring a civil action for failing to receive the information and recover actual damages, and, if the prevailing party, the person shall receive reasonable attorney's fees.

(b) The attorney general and reporter may bring a civil action for equitable relief for a violation under this chapter.

(c) Any violation of this chapter shall constitute unprofessional conduct for a professional licensed in this state, who shall be remanded to the appropriate licensure board for review and subject to disciplinary action in accordance with the appropriate licensure provisions governing the board.

(d) No donor shall be subject to any penalty for being induced to accept or accepting valuable consideration for egg or sperm donation.

SECTION 2. For the purpose of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2016, the public welfare requiring it.